penses to the wedding paid. Suit was then brought against him for an accounting, and the Court of Appeals in Wenninger *v.* Mitchell, 122 Southwestern Reporter, 1130, held that Mrs. Wenninger could recover her share of the partnership property, as the contract was an unconscionable one, such as no one in her senses and not under a delusion would make, and as no honest and fair-minded person would accept. To uphold such contracts would make marriage a matter of traffic, and would stimulate marriage procurement in such degree as to be demoralizing in its tendency and unhappy in its results. Although plaintiff is in pari delicto, and may profit by the relief asked, the public good requires that it be granted.

Cruel and Unusual Punishment.—In the case of State *v.* Ross, 104 Pacific Reporter, 596, it appeared that defendant was convicted of larceny of some $288,000 from funds of the state, and a fine in double that amount assessed in addition to a five-year term in the penitentiary. Defendant was to stand committed till the fine should be paid; thus making a total imprisonment of more than 790 years in case he had to work it all out at the $2 per day allowed. Interest seems to have not been imposed, but it is worthy of note that, if it had been, accused would not only have been condemned to languish in the county jail through all eternity, but would have needed the daily allowance of a dozen fellow prisoners to keep from plunging further toward hopeless insolvency for all time to come. Fortunately, however, the Oregon Supreme Court held the punishment "cruel and unusual," notwithstanding it was within the maximum provided by statute.

Release of Surety by Usury in Principal Contract.—The Georgia Court of Appeals, in Hancock *v.* Bank of Tifton, 65 Southeastern Reporter, 784, holds that usury in a note makes invalid a waiver of homestead therein, and thus increases the risk of a surety, so as to operate as a discharge of his liability when he signs without notice of the infirmity. The decision follows that of the Georgia Supreme Court in the earlier case of Prather *v.* Smith, 28 Southeastern Reporter, 857. See note to Com. *v.* Richardson, ante, p. 684.

Lying and Perjury Distinguished.—A man may not always be committing a crime even when he thinks he is doing so. After the first witness in a criminal prosecution in Texas had given his testimony, accused, who was on bail, left the courtroom and one Emery was thereafter called as a witness and testified or supposed he testified. He at least said things which a jury of his peers declared false, and he was sentenced to be punished for perjury; but the Texas Court of Criminal Appeals in Emery *v.* State, 123 Southwestern Reporter, 133, reversed the conviction on the ground that, by absence of accused in the former prosecution, the court lost jurisdiction, and perjury could

not therefore be predicated on anything said during that time. Evidently everything was merely suppositional. Accused supposed he was being tried, and the court and jury supposed they were trying him. Emery supposed he was a witness, and, presumably, supposed he was giving perjured testimony; but they were all apparently wrong. The supposed witness was apparently only telling an interesting story without regard to truth, and the judges and jurors were only interested listeners. It may be hard on Emery to thus be deprived of a two-years sentence in the penitentiary, but of such are the rigors of the law.

No Recovery for Physical Consequences of Fright.—A mother, with two young children, was passing in a city street when there was an explosion of a pot of molten lead, some of the drops being cast upon her clothes and hand. She recovered $2,000 damages for the negligence of defendant, but the Appellate Division of the New York Supreme Court in Hack *v.* Dady, 118 New York Supplement, 906, reversed the judgment, holding that, as the injury was very slight, a radical impairment of her nervous system, general health, and bodily organs, resulting in three successive miscarriages, was not an ordinary and natural result of the accident, but the physical consequence of her fright, and, since damages could not be recovered for mere fright from another's negligence, there could be no recovery for the physical consequence of the fright.

False Imprisonment by Charitable Institution.—The House of the Good Shepherd located at Detroit, Mich., is one of 300 institutions of like character for moral reformation of girls and women, and for the protection of such as may be exposed to particular dangers from injuries affecting character and virtue. Some of the inmates come to it voluntarily, some are placed there at the request of parents or guardians, and some are sent to it instead of the State Industrial School, on conviction of crime. In the case of Gallon *v.* House of Good Shepherd, 122 Northwestern Reporter, 631, the evidence, while conflicting, went to show that plaintiff's ward and sister, for whose benefit the action was instituted, was induced in some way to enter the defendant institution, and was there confined for seven years against her will, and without knowledge of her relatives, who were residing in Detroit and who made efforts to discover her whereabouts without avail. One defense interposed to the action was that the institution was, on account of the statute allowing detention therein of some persons convicted of crime, a governmental agency, and therefore not liable for torts of its agents or employees; another, that it was a public charitable institution, and that funds raised for charitable purposes could not be diverted for payment of injuries sustained through illegal or tortious acts of its officers or servants.